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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/420,965	10/20/1999	ELLEN M. HEATH	1074.010US1	3488

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Daniel J. Polglaze  
Fogg Slifer & Polglaze, P.A.  
P.O. Box 581009  
Minneapolis, MN 55458-1009

EXAMINER

GORDON, BRIAN R

ART UNIT

PAPER NUMBER

1743

DATE MAILED: 03/28/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/420,965

Applicant(s)

HEATH ET AL.

Examiner

Brian R. Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 12, 18-22 and 40-47 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 12, 18-22 and 40-47 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 13, 2002 has been entered.

### ***Drawings***

2. The substitute drawings were received on July 11, 2002. These drawings are acceptable.

### ***Response to Arguments***

3. Applicant's arguments with respect to claims 1-9, 12, and 18-22 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1, 4-5, 8, 12 18-19, 21 and 40-43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Konefal et al., US 6,039,195.

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Konefal et al. disclose a child resistant package which includes a container having an open end and multiple threads on the external surface of the container adjacent the upper end. A closure <sup>(cap)</sup> having a base wall and a peripheral skirt has an inner surface formed with single or multiple threads corresponding in number to the multiple threads on the container <sup>(vessel)</sup> for engaging the threads on the container. A deflectable release element is formed integrally on the container. The release element includes an integral axially deflectable lug extending upwardly toward the open end of the container. The closure has at least one locking lug on the skirt of the closure, the number of locking lugs preferably corresponding to the number of threads on the container and closure.

<sup>(cap)</sup>  
The closure 26 includes a second annular skirt 40 extending axially downwardly from the lower end of the skirt 36 and connected thereto by a second annular radial flange 42 such that the skirt 40 is spaced from the thread 38. A single locking lug or stop 44 extends 1 5 radially inwardly from the inner surface of skirt 40.

In FIGS. 7 and 10, a deflectable tab or release element 50 is mounted on the vial 20 at an interruption or space in the flange 24. The release element 50 is connected to the vial 20 by circumferentially spaced horizontal flexible and resilient arms 52 which are attached to the vial 20 at one end and to the release element 50 at the other end such that the release element is spaced from the vial. The deflectable release element 50 has a radial width and axial thickness which is sufficient to make the element convenient for an adult to remove the closure from the container by depressing the element 50 yet difficult for a child to open the package. A single integral cantilever lug

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54 (vessel flange) extends axially upwardly from the release element 50. The cantilever lug 54 is axially deflectable upon the application of the closure and is mounted in a cantilever manner on the release element 50 and includes an axial stop surface 56 which is inclined at a small acute angle to an axial radial plane complementary to the angle of surface 46 on locking lug 44 (cap flange).

Konefal et al. teach that the vessel is sealed or secured when complimentary lugs (flanges) 44 and 54 (which in the figures appear to be substantially square or rectangular) are aligned.

The plastic container 20 is preferably made of homopolymer polypropylene and the closure 26 is preferably made of high density polyethylene. Other container materials which can be used, depending on the nature of the contents, such as copolymer polypropylene, other polyethylenes, and PET. Other closure materials may also be used depending on the nature of the contents of the containers.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 1-9, 12, 18-22, and 40-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Konefal et al., in view of Long Jr.

Konefal et al., US 6,039,195 does not disclose that the cap and container have disjointed threads.

Long Jr. discloses a snap-on, screw-off closure and container that have multiple discontinuous mating threads. As it appears in the figures each thread extends about 180 degrees around the vessel neck and each thread starts in a location about 90 degrees away from an adjacent thread. The device is manufactured from plastic and more preferably a high density plastic suitable for blow molding of the thread finish. The molding process makes it obvious that the design and location of the threads may be altered as so desired.

Helically extending between first end 14 and the second end 16 of the annular wall 12 are an appropriate number of threads to permit snap-on or screw-on application, preferably eight or nine threads 24 terminating at points 26 and 27 proximate to the first end 14 and second end 16 of annular wall 12, respectively. Preferably, threads 24 are helically spaced in a continuous relationship as shown in FIG. 1 but threads 24 can alternately be discontinuous and can take on any cross-sectional profile suitable for mating with threads 43 on the closure 30 during snap and screw-on application of the closure 30 to the neck finish 10 (column 3, lines 57-67).

It would have been obvious that if the threads of the cap and vessel are manufactured to a certain same length the securing of the vessel will be accomplished when the cap is turned in the direction of applying the cap that certain distance and removing the cap would occur when the cap is turned in the opposite direction that same certain length.

It would have been obvious to one of the ordinary skill in the art at the time of the invention to modify the device of Konefal et al., to include the principles of Long Jr. et al in order develop a closure which would indicate tampering of the seal.

The examiner asserts that it would have been obvious to one of the ordinary skill in the art to modify the device by employing the disjointed threaded formation of Long Jr., for it has been disclosed that both single and multiple threads are conventional and well-known in the art for providing a secure attachment of a cap to a vessel. As to the number of threads and the spacing on the cap, it has been disclosed (specification page 12 and cited references, Folchini, Collins, Edwards, and Edwards et al.) that "four-start" threads are also conventional and well known in the art. It is obvious that the spacing of the threads depends on the total number of the threads; therefore, if four threads are to be equally spaced around a 360 degrees perimeter, then each thread would obviously be spaced 90 degrees from an adjacent thread. Although Long Jr. discloses the use of 8 or 9 equally spaced threads, this does not preclude the use of a conventional "four-start" thread configuration to provide suitable closure means for a cap and vessel assembly. The examiner hereby asserts that the employment of a well-known, "conventional" thread format does not distinguish the claimed invention over the prior art.

As to claims 4 and 5, it would have also been obvious to manufacture the assembly to include flanges of any shape in the molding process.

As to the method claims 18-22, it would have been obvious that one of the ordinary skill in the art would have recognized that the caps are secured onto the

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container by placing the cap on the opening and turning the cap in a given direction and removing the cap to remove the contents can be accomplished by turning the cap in the opposite direction and the method can be repeated as so desired.

### **Conclusion**


5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Weiler et al., Hidding et al., Yeaton et al., Wilde, McDevitt, Heath Jr. (,437 and ,702), Kundert, and Freeman disclose containers and closure assemblies.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian R. Gordon whose telephone number is (703) 305-0399. The examiner can normally be reached on M-F, with 2nd and 4th F off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 703-308-4037. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7719 for regular communications and (703) 305-3014 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

brg  
March 20, 2003

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700